

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the matter of application Serial No. 78/771,196. Published
in the Official Gazette on August 22, 2006..

InfoDot LLC,

March 20, 2007

Opposer,

v.

Opposition No. 91175738

Key Surgical Incorporated,

Applicant.

ANSWER TO NOTICE OF OPPOSITION

TTAB
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Key Surgical Incorporated (Applicant) in answer to the
Notice of Opposition filed by InfoDot LLC (Opposer) denies each
and every allegation contained in the Notice of Opposition
unless specifically admitted herein below. With respect to the
numbered paragraphs contained in the Notice of Opposition,
Applicant states as follows:

1. Applicant denies the allegations of Paragraph 1 of the
Notice of Opposition.

2. Applicant admits that Opposer filed Application No.
76/653,292 on January 12, 2006, but this application filed by
Opposer was void ab initio.

3. Applicant denies the allegations of Paragraph 3 of the

Notice of Opposition.

4. Applicant denies the allegations of Paragraph 4 of the Notice of Opposition.

5. Applicant denies the allegations of Paragraph 5 of the Notice of Opposition.

6. In response to Paragraph 6 of the Notice of Opposition, Applicant admits that it operates for profit.

7. In response to Paragraph 7 of the Notice of Opposition, Applicant admits that it filed on December 12, 2005 in the U.S. Patent and Trademark Office an application for trademark registration of the mark INFODOT for "circular adhesive labels printed, etched or stamped to show a bar code, data matrix, text, symbology, code, images and/or numerals used in automatic identification systems to be attached or printed to or printed, etched or imaged on various medical instruments and products in Class 016" (Application Serial No. 78/771,196). Applicant denies the remaining allegations of Paragraph 7.

8. Applicant hereby incorporates by reference its responses contained in Paragraph Nos. 1-7 above.

9. Applicant denies the allegations of Paragraph 9 of the Notice of Opposition and specifically notes that prior to the time Applicant filed its application for registration, Opposer had been dissolved. Whatever rights Opposer had ceased to exist when Opposer was dissolved. Applicant had the right to and did

act in reliance on said dissolution.

10. In response to Paragraph 10 of the Notice of Opposition, Applicant states that since Opposer had been dissolved long prior to the date of Applicant's U.S. trademark application for the INFODOT mark, Opposer did not legally exist at that time and, therefore, was incapable of authorizing or consenting to Applicant's trademark application.

11. Applicant admits the allegations of Paragraph 11 of the Notice of Opposition.

12. Applicant denies the allegations of Paragraph 12 of the Notice of the Opposition.

13. Applicant denies the allegations of Paragraph 13 of the Notice of Opposition.

14. Applicant denies the allegations of Paragraph 14 of the Notice of Opposition.

15. Applicant denies the allegations of Paragraph 15 of the Notice of Opposition.

16. Applicant denies the allegations of Paragraph 16 of the Notice of Opposition.

17. Applicant denies the allegations of Paragraph 17 of the Notice of Opposition.

18. Applicant hereby incorporates the responses contained in Paragraphs 1-17 above by reference.

19. Applicant admits the allegations of Paragraph 19 of

the Notice of Opposition.

20. Applicant admits the allegations of Paragraph 20 of the Notice of Opposition.

21. Applicant denies the allegations of Paragraph 21 of the Notice of Opposition.

22. Applicant denies the allegations of Paragraph 22 of the Notice of Opposition.

23. Applicant denies the allegations of Paragraph 23 of the Notice of Opposition.

24. In response to Paragraph 24 of the Notice of Opposition, Applicant admits that if it is granted registration of its claimed INFODOT mark as shown in Application Serial No. 78/771,196, Applicant will thereby obtain the *prima facie* exclusive right to use the registered mark in commerce on or in connection with the goods specified in the registration subject to any conditions or limitations stated therein as set forth in 15 U.S.C. § 1115. Applicant denies the remaining allegations of Paragraph 24 of the Notice of Opposition.

AFFIRMATIVE DEFENSES

25. Opposer is a limited liability company organized under the laws of the State of Colorado.

26. On or about November 26, 2006, Opposer filed U.S. Trademark Application Serial No. 78/182,451 for the mark INFODOT. On or about July 22, 2004, Application Serial No.

78/182,451 was abandoned by Opposer because Opposer failed to respond to or was late in responding to an Office Action.

27. The laws of the State of Colorado require all limited liability companies formed under Colorado law to file an Annual Report.

28. On or about September 14, 2004, Opposer was dissolved by the Colorado Secretary of State for failure to file the required Annual Report.

29. In November or December of 2005, Applicant learned from the records of the U.S. Patent and Trademark Office that Application Serial No. 78/182,451 had been abandoned and that there were at that time no pending applications or registrations for the INFODOT mark. At about this same time, Applicant learned from the Colorado Secretary of State that InfoDot LLC had been dissolved on or about September 14, 2004 for failure to file the required Annual Report.

30. Applicant filed the trademark application which is the subject of this opposition on or about December 12, 2005. Thus, Applicant filed its trademark application more than sixteen months after Application Serial No. 78/182,451 had been abandoned and approximately fifteen months after InfoDot LLC had been dissolved.

31. While the Colorado Secretary of State's Office did reinstate Opposer on or about March 1, 2006 based upon Articles

of Reinstatement filed on that date, such reinstatement has no effect on others, including Applicant, who acted in reliance on the dissolution.

32. Since Opposer did not even exist on the date of filing of the trademark application which is the subject of this opposition, Opposer has no standing to bring this opposition.


33. In its Notice of Opposition, Opposer relies on U.S. Trademark Application Serial No. 76/653,292 which was filed by Opposer on January 12, 2006. This application was void ab initio. This occurred after InfoDot LLC had been dissolved by the Colorado Secretary of State, after the application which is the subject of this opposition was filed, but before the Colorado Secretary of State reinstated InfoDot LLC.

34. This opposition by Opposer cannot be sustained for reasons of unclean hands, laches, estoppel, fraud and mistake.

WHEREFORE, Applicant requests that this opposition be dismissed and that it be granted a registration of the INFODOT mark.

Respectfully submitted,

NIKOLAI & MERSEREAU, P.A.

A handwritten signature in black ink, appearing to read "James T. Nikolai". The signature is fluid and cursive, with the first name "James" being more prominent than the last name "Nikolai".

James T. Nikolai
Attorney for Applicant
900 Second Avenue So.
Suite 820
Minneapolis, MN 55402
(Phone: 612) 339-7461
Fax: (612) 349-6556

Date: March 20, 2007

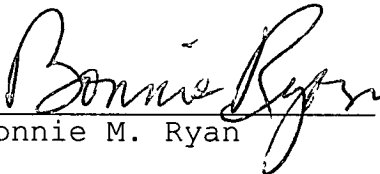
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

InfoDot, LLC

Opposer, Opposition No. 91175738
v.
Key Surgical Incorporated,
Applicant.

CERTIFICATE OF MAILING

I hereby certify that an original and two copies of the Answer to Notice of Opposition mailed February 17, 2007 in the above-noted opposition are being deposited with the U.S. Postal Service as First Class Mail in an envelope addressed to:
Trademark Trial and Appeal Board, P.O. Box 1451, Alexandria VA 22313-1451, postage prepaid, this 20th day of March, 2007.


Bonnie M. Ryan

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

InfoDot, LLC,

Opposer,

Opposition No. 91175738

v.

Key Surgical Incorporated,

Applicant.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the following documents:

1. Answer to Notice of Opposition with Certificate of Mailing; and
2. Certificate of Service.

was served upon Tara A. Branscom, LeClair Ryan, 1800 Wachovia Tower, Drawer 1200, Roanoke, VA 24006 by First Mail this 20th day of March, 2007.



Bonnie Ryan